

**NOTICE OF PROPOSED REGULATIONS  
OF THE DEPARTMENT OF JUSTICE  
FOR THE CERTIFICATION OF NON-EXEMPTED INDIVIDUALS WHO TAKE  
FINGERPRINT IMPRESSIONS**

**INITIAL STATEMENT OF REASONS**

The Department of Justice (DOJ) proposes to adopt regulations for the certification of non-exempted individuals who take fingerprint impressions pursuant to the authority in Penal Code section 11102.1(j). The regulations will occupy sections 994 through 994.16 of Chapter 13.6, Division 1, Title 11, of the California Code of Regulations.

**GENERAL INFORMATION**

The DOJ is designated by statute (Penal Code sections 11075 through 11112) as the repository for criminal history records. The DOJ is responsible for safeguarding the integrity of the criminal history and all associated records and files. The Automated Criminal History System (ACHS) is used primarily to receive arrest and disposition information on those arrested for and convicted of the violation of state criminal statutes, and to provide the information to authorized criminal justice system users. The ACHS is also used to provide criminal offender record information (CORI) to entities who require such information for approval of employment, licensing, and/or certification.

The method of accumulating and associating records for criminal history purposes is by fingerprints. Fingerprints are submitted to the DOJ either by manually rolling the fingerprints on 8" by 8" cards or by live-scan computer processes. Fingerprints have historically been sent to the DOJ for CORI checks by law enforcement personnel and state employees who have received training in taking fingerprints and have undergone a criminal history background investigation. These individuals are trained to acquire proper and valid picture identification prior to taking fingerprint impressions and to insure that the fingerprints submitted to the DOJ are actually those of the person whose record is being checked.

**PUBLIC PROBLEM THE PROPOSED REGULATIONS ARE INTENDED TO ADDRESS**

In the past few years, new statutes have expanded the lists of applicants who must have a criminal history record check prior to employment, licensing, or certification. As a result, law enforcement personnel or trained state employees have been taking the fingerprints of these applicants. In addition, the Applicant Live Scan Network, which is an automated system of scanning, transmitting and searching fingerprints (part of the DOJ master plan specified in Penal Code section 11112.2), is continuing to grow statewide. Many Live Scan devices are being used by a large number of non-law enforcement clients.

Without safeguards in the system, it is possible that a person taking applicant fingerprints may submit to the DOJ the fingerprints of an individual who is known to have no criminal record in order to help another person who may have a record gain employment, licensing, or certification that would normally not be approved. It is also possible that an individual may present fictitious information and/or the identification of an individual with no criminal record to the person taking applicant fingerprints in order to pass a criminal offender record investigation.

The DOJ must be certain that the persons taking and submitting the fingerprints are trained and knowledgeable of the stringent rules and procedures for safeguarding the integrity of criminal history records. These persons must also understand the importance of valid photo identification, and the proper methods of acquiring acceptable fingerprint impressions.

In response to the problems inherent in the proliferation of non-law enforcement personnel who take fingerprint impressions and because the DOJ must be assured of the integrity, accuracy and reliability of the criminal history system, the Legislature passed Assembly Bill 2659 in 2002, which added Penal Code section 11102.1 effective January 1, 2003. This section mandates the DOJ to establish, implement and maintain a certification program for non-law enforcement personnel who take fingerprint impressions for licensing, certification, or employment purposes.

## **PROPOSED REGULATIONS**

### **General**

The DOJ proposes to add sections 994 through 994.16 of Chapter 13.6, Division 1, Title 11, of the California Code of Regulations. The following general statements apply to all the proposed regulations:

- The regulations being proposed address the public problem cited above and satisfy the administrative requirements of Penal Code section 11102.1.
- The DOJ did not rely upon any technical, theoretical, or empirical studies, reports, or similar documents in proposing these amendments to the regulations.
- No reasonable alternatives were identified by the DOJ, nor were there any alternatives brought to the attention of the DOJ, at the time the regulations were proposed.
- No alternatives that would lessen the impact on small businesses were considered.

## **Section 994. “Title”**

*Specific purpose and rationale for the regulation:*

The proposed regulation establishes a title for the regulatory action. The title is sufficiently clear to establish the purpose of the regulatory action for all persons affected.

## **Section 994.1. “Scope”**

*Specific purpose and rationale for the regulation:*

The proposed regulation specifies the scope of the regulations and increases the general clarity of the regulatory action for all persons affected.

## **Section 994.2. “Definition of Key Terms”**

*Specific purpose and rationale for the regulation:*

The proposed regulation defines the key terms used in the process of certifying individuals who take fingerprint impressions for employment, licensing, and certification purposes. Defining the key terms used in the regulations increases the general clarity of the regulatory action for all persons affected.

## **Section 994.3. “Qualifications for Certification”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific that the qualifications necessary for the certification of all individuals making application are the same as in Penal Code section 11102.1(d).

## **Section 994.4. “Application for Certification”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific the information to be provided by the individual applying for certification and implements Penal Code sections 11102.1(e), 11102.1(f) and 11102.1(g).

#### **Section 994.5. “Submission of Application, Fingerprints and Fees”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific the information to be submitted to the DOJ in order to be certified and implements Penal Code section 11102.1(b).

#### **Section 994.6. “Certification by the DOJ”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific the method that the DOJ will use to establish the certification as specified in these regulations and implements Penal Code section 11102.1(a).

#### **Section 994.7. “Duration of Certification”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific the duration of the certification and implements Penal Code section 11102.1(a).

#### **Section 994.8. “Non-transferability of Certification”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific that the certificate issued by the DOJ to an individual is non-transferable or assignable to another individual or entity.

#### **Section 994.9. “Duplicate Certification Letter”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific the conditions and the method of obtaining a duplicate certification letter.

#### **Section 994.10. “Application Processing Time”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific the time standards by which the DOJ will process the application for certification. The proposed regulation also implements the requirements of Government Code section 15376 which requires agencies issuing permits to adopt regulations specifying processing time periods.

#### **Section 994.11. “Application Processing Time Appeal Process”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific an appeal process for those cases where the DOJ may exceed the specified time. The proposed regulation also implements the provisions of Government Code section 15378(b), which requires agencies issuing permits to establish an appeal process.

#### **Section 994.12. “Denial of Application for Certification or Revocation of Existing Certification; Failure to Respond; Opportunity to be Heard”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific the process for denial of an application or revocation of an existing certification. The proposed regulation also implements the provisions of Government Code section 11400.10 allowing an agency to adopt regulations to govern an adjudicative proceeding.

#### **Section 994.13. “Administrative Hearing”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific the process by which the DOJ will hold an administrative hearing if requested by the applicant, if a certification is denied, or an existing certification is revoked.

#### **Section 994.14. “Time and Place of Administrative Hearing”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific the process by which the DOJ will notify the applicant who requests a hearing, and the time and place the administrative hearing will take place.

#### **Section 994.15. “Evidence Rules”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific the evidence rules which will prevail whenever an administrative hearing is conducted at the request of an applicant who has been denied certification or who has had an existing certification revoked.

#### **Section 994.16. “Proposed Decision”**

*Specific purpose and rationale for the regulation:*

The proposed regulation makes specific the process for the proposed decision rendered after an administrative hearing is conducted at the request of an applicant who has been denied certification or who has had an existing certification revoked.